

Indiana Public Defender Commission Meeting Minutes

December 15, 2010

Chairman Mark Rutherford called the business meeting to order at 2:01 pm. Commission members in attendance were, Hon. James Ahler, Hon. Mary Ellen Diekhoff, Rep. Greg Steuerwald, Susan Carpenter, Peter Nugent, David Hensel and Rep. Vernon Smith. Also in attendance were staff counsel Deborah Neal, and Larry Landis of the Indiana Public Defender Council.

New Member: Chairman Rutherford introduced Judge James Ahler as the new member to the Indiana Public Defender Commission. Judge Ahler is the superior court judge in Jasper County, Rensselaer, Indiana. He was appointed to the Commission on October 6, 2010 by Chief Justice Randall Shepard to fill the position formerly held by Bettye Lou Jerrel of Evansville.

Certificate of Appreciation to Bettye Lou Jerrel: The Indiana Public Defender Commission, in conjunction with the Indiana Supreme Court, presented a Certificate of Appreciation to Bettye Lou Jerrel for her seventeen years of service as a member to the Commission. Ms. Jerrel was appointed to the Commission in 1993 by Chief Justice Randall Shepard, and served until resigning her position in 2010. In the seventeen years that Bettye Lou Jerrel was a member, the Commission adopted the Standards for Indigent Defense Services in Non-capital Cases, obtained legislative changes allowing reimbursement from the public defense fund for felony cases, approved fifty-eight counties' comprehensive plans for delivering non-capital indigent defense services, and distributed \$107 million to counties eligible to receive reimbursement from the Public Defense Fund. Due to adverse weather conditions, Ms. Jerrel was unable to attend the meeting to accept the Certificate in person. It will be sent to her home in Evansville, Indiana.

Approval of Minutes from 9/22/10 Meeting: Chairman Rutherford asked for any changes or additions to the minutes of September 22, 2010. There being none, Judge Diekhoff made the motion to approve the minutes, and Peter Nugent seconded the motion. There was no discussion or opposition. The minutes were approved.

2011 Commission Meeting Dates: The 2011 meeting dates for the Public Defender Commission were previously set as follows: March 23, 2011, June 22, 2011, September 21, 2011 and December 14, 2011. Commission staff was unable to secure room 804 at 30 S. Meridian Street for 6/22/11. Chairman Rutherford proposed moving the 6/22/11 meeting date to 6/15/11, and it was accepted by unanimous consent.

Staff Counsel Report: Deborah Neal reported that Knox County's reimbursement will receive a 10% penalty for late reporting. She asked the Commission to consider suspending the 3rd quarter payments to Blackford and Jay counties because their new case assignments have been out of compliance for five and six quarters, respectively. Ms. Neal pointed out that the counties have worked with her and the Commission during this time to come into compliance; however, due to lack of available public defense attorneys the counties could not maintain eligibility for

reimbursement from the Public Defense Fund. She recommends that if Blackford or Jay County is able to get into compliance in a reasonable amount of time, the Commission could consider paying the suspended 3rd quarter request. Greg Steuerwald made the motion to suspend payment of the 3rd quarter reimbursement request from Blackford and Jay Counties, and that the Commission may reconsider this suspension if either county is able to come into compliance with caseload standards. Susan Carpenter seconded the motion. The motion passed unanimously.

Deborah Neal also reported that Jefferson and Cass Counties communicated they are unable to achieve caseload compliance necessary to qualify for reimbursements from the Public Defense Fund at this time.

Michael Fischkorn of Frischkorn Law LLC made a request by letter that his attendance and subsequent CLE credits for participating in the ABA Judicial Division Appellate Judges Conference November 18-21, 2010, be counted towards Standard F's requirements for eligibility to be appointed appellate counsel in non-capital cases. Susan Carpenter moved to approve the ABA Judicial Division Appellate Judges Conference November 18-21, 2010 for eligibility to be appointed appellate counsel in non-capital cases. Judge Diekhoff seconded the motion. Motion passed unanimously.

Status of Counties Compliance with Standard J – Caseloads: Ms. Neal reported that 82% of the participating counties are in compliance with Standard J; and this is an improvement over the 74% in compliance last quarter.

Financial Status of Public Defense Fund: Deborah Neal reported that December reimbursement requests would be paid after the January 1, 2011 disbursement of \$9.125 million to the Public Defense Fund. At this time, the Fund has a balance of \$3,183,796.68 and needs an additional \$805,500.17 to pay the capital and non-capital claims.

Requests for 50% Reimbursement in Capital Cases: Deborah Neal explained that Mark Inman, co-counsel in the Boone County capital case of *State v. Chamorro*, was not in compliance with Criminal Rule 24's continuing legal education requirements at the time of his appointment to the case. He completed the necessary CLE requirements on August 26, 2010. Ms. Neal reduced the 47.2 hrs = \$1,840.07 bill for Mark Inman's attorney services to 3.22 hrs. = \$341.32 (50% is \$170.66). This change on *Chamorro* brought the total reimbursement request for the 3Q10 to \$97,073.45. Susan Carpenter moved to approve payment of capital claims in the amount of \$97,073.45 and Rep. Vernon Smith seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
December 15, 2010		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro 1	\$2,304.71
	Chamorro 2	\$170.66
	Chamorro 3	\$3,328.40
	Chamorro 4	\$1,696.00
Lake	Flores	\$12,211.38
Marion	Davis	\$46,291.42
Vanderburgh	Weisheit 1	\$7,975.44
	Weisheit 2	\$23,095.44
TOTAL		\$97,073.45
Notes: Chamorro 2nd request was 1840.07 consisting of only attorney fees for Mark Inman. Inman was not CR24 qualified until 8/26/10; reimbursement for services after that date only.		

Requests for 40% Reimbursement in Non-Capital Cases: Deborah Neal reported reimbursement requests in non-capital public defense expenses for the 3rd quarter of 2010 totaled \$3,892,223.40; however, suspending Jay and Blackford Counties' reimbursements reduces the total to \$3,856,391.57. David Hensel moved to approve the claims totaling \$3,856,391.57 and Judge Diekhoff seconded the motion. The motion passed unanimously.

Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION							
Third Quarter 2010 Requests for Reimbursements in Non-Capital Cases							
AMENDED 12/15/2010							
COUNTY	Late	2010 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	%	Eligible Expenditure	40% Reimbursed
ADAMS	0.00	7/01 - 9/30	\$69,732.38	\$17,729.65	25%	\$52,002.73	\$20,801.09
ALLEN	0.00	7/01 - 9/30	\$826,780.43	\$95,425.76	12%	\$731,354.67	\$292,541.87
BENTON	0.00	7/01 - 9/30				\$0.00	\$0.00
BLACKFORD	0.00	7/01 - 9/30	\$41,222.50	\$9,017.42	22%	\$32,205.08	\$0.00
CARROLL	0.00	7/01 - 9/30	\$32,031.16	\$6,565.39	20%	\$25,465.77	\$10,186.31
CLARK	0.00	7/01 - 9/30	\$158,308.09	\$20,243.76	13%	\$138,064.33	\$55,225.73
CRAWFORD	0.00	7/01 - 9/30			0%	\$0.00	\$0.00

DECATUR	0.00	7/01 - 9/30	\$40,861.56	\$9,515.72	23%	\$31,345.84	\$12,538.34
FAYETTE	0.00	7/01 - 9/30	\$104,571.45	\$20,629.74	20%	\$83,941.71	\$33,576.68
FLOYD	0.00	7/01 - 9/30	\$132,928.51	\$24,290.30	18%	\$108,638.21	\$43,455.28
FOUNTAIN	0.00	7/01 - 9/30	\$28,231.20	\$3,187.39	11%	\$25,043.81	\$10,017.52
FULTON	0.00	7/01 - 9/30	\$67,028.51	\$19,803.88	30%	\$47,224.63	\$18,889.85
GRANT	0.00	7/01 - 9/30	\$295,868.00	\$42,812.00	14%	\$253,056.00	\$101,222.40
GREENE	0.00	7/01 - 9/30	\$79,147.82	\$12,885.18	16%	\$66,262.64	\$26,505.06
HANCOCK	0.00	7/01 - 9/30	\$123,254.45	\$30,392.75	25%	\$92,861.70	\$37,144.68
HENRY	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
HOWARD	0.00	7/01 - 9/30	\$329,994.16	\$55,880.36	17%	\$274,113.80	\$109,645.52
JASPER	0.00	7/01 - 9/30	\$81,574.06	\$25,491.89	31%	\$56,082.17	\$22,432.87
JAY	0.00	7/01 - 9/30	\$77,273.93	\$19,899.42	26%	\$57,374.51	\$0.00
JENNINGS	0.00	7/01 - 9/30	\$53,662.86	\$10,819.51	20%	\$42,843.35	\$17,137.34
KNOX	0.10	7/01 - 9/30	\$189,437.94	\$57,507.95	30%	\$131,929.99	\$47,494.80
KOSCIUSKO	0.00	7/01 - 9/30	\$139,810.77	\$52,922.72	38%	\$86,888.05	\$34,755.22
LAGRANGE	0.00	7/01 - 9/30	\$38,350.35	\$4,214.60	11%	\$34,135.75	\$13,654.30
LAKE	0.00	7/01 - 9/30	\$880,538.88	\$0.00	0%	\$880,538.88	\$352,215.55
LAPORTE	0.00	7/01 - 9/30	\$142,547.32	\$19,271.99	14%	\$123,275.33	\$49,310.13
MADISON	0.00	7/01 - 9/30	\$374,723.91	\$34,253.03	9%	\$340,470.88	\$136,188.35
MARION	0.00	7/01 - 9/30	\$4,018,249.29	\$760,202.02	19%	\$3,258,047.27	\$1,303,218.91
MARTIN	0.00	7/01 - 9/30	\$7.46		0%	\$7.46	\$2.98
MIAMI	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
MONROE	0.00	7/01 - 9/30	\$398,875.92	\$65,047.46	16%	\$333,828.46	\$133,531.38
MONTGOMERY	0.00	7/01 - 9/30	\$140,717.06	\$63,082.71	45%	\$77,634.35	\$31,053.74
NEWTON	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
NOBLE	0.00	7/01 - 9/30	\$112,352.68	\$26,968.58	24%	\$85,384.10	\$34,153.64
OHIO	0.00	7/01 - 9/30	\$40,253.57	\$1,456.00	4%	\$38,797.57	\$15,519.03
ORANGE	0.00	7/01 - 9/30	\$39,549.39	\$9,348.04	24%	\$30,201.35	\$12,080.54
PARKE	0.00	7/01 - 9/30	\$38,121.82	\$10,516.36	28%	\$27,605.46	\$11,042.18
PERRY	0.00	7/01 - 9/30	\$65,613.75	\$13,300.08	20%	\$52,313.67	\$20,925.47
PIKE	0.00	7/01 - 9/30	\$45,402.60	\$13,353.71	29%	\$32,048.89	\$12,819.56
PULASKI	0.00	7/01 - 9/30	\$28,659.05	\$4,979.00	17%	\$23,680.05	\$9,472.02
RUSH	0.00	7/01 - 9/30	\$52,696.59	\$15,056.17	29%	\$37,640.42	\$15,056.17
SAINT JOSEPH	0.00	7/01 - 9/30	\$501,337.01	\$66,717.82	13%	\$434,619.19	\$173,847.68
SCOTT	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
SHELBY	0.00	7/01 - 9/30	\$96,963.05	\$17,246.22	18%	\$79,716.83	\$31,886.73
SPENCER	0.00	7/01 - 9/30	\$22,168.79	\$7,625.00	34%	\$14,543.79	\$5,817.52

STEUBEN	0.00	7/01 - 9/30	\$71,822.12	\$15,638.68	22%	\$56,183.44	\$22,473.38
SULLIVAN	0.00	7/01 - 9/30	\$46,980.10	\$13,862.65	30%	\$33,117.45	\$13,246.98
SWITZERLAND	0.00	7/01 - 9/30	\$49,206.60	\$14,165.54	29%	\$35,041.06	\$14,016.42
TIPPECANOE	0.00	7/01 - 9/30	\$514,775.08	\$136,294.83	26%	\$378,480.25	\$151,392.10
UNION	0.00	7/01 - 9/30	\$20,298.98	\$2,965.26	15%	\$17,333.72	\$6,933.49
VANDERBURGH	0.00	7/01 - 9/30	\$601,110.96	\$95,911.10	16%	\$505,199.86	\$202,079.94
VERMILLION	0.00	7/01 - 9/30	\$25,096.44	\$12,054.20	48%	\$13,042.24	\$5,216.90
VIGO	0.00	7/01 - 9/30	\$389,858.95	\$42,762.13	11%	\$347,096.82	\$138,838.73
WABASH	0.00	7/01 - 9/30	\$55,894.10	\$11,235.27	20%	\$44,658.83	\$17,863.53
WARREN	0.00	7/01 - 9/30	\$6,450.00	\$1,614.00	25%	\$4,836.00	\$1,934.40
WASHINGTON	0.00	7/01 - 9/30	\$83,679.88	\$16,106.73	19%	\$67,573.15	\$27,029.26
WELLS	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
WHITE	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
WHITLEY	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
TOTAL			\$11,774,021.48	\$2,030,269.97		\$9,743,751.51	\$3,856,391.57
NOTES:	At the 12/15/10 Commission meeting, the members voted to suspend reimbursement to Blackford and Jay Counties.						

Other Matters: Larry Landis reported that at the Legislature's budget hearings, Chief Justice Shepard made the request for an additional \$3 million to the Public Defense Fund for FY11-12; the Indiana Public Defender Commission's budget is incorporated in the Supreme Court's budget. Mr. Landis stated that the Chief Justice answered several questions concerning public defense that were presented by the legislators. As more counties are looking for money, the Commission's public defense reimbursement program has become more desirable for counties not presently participating. The additional \$3 million will cover the cost of additional counties joining the fund and insure that the Commission is able to return the full 40% promised by the Legislature.

Chairman Rutherford discussed the problems with not having a clear directive for who hires staff counsel for the Commission. He plans to meet with Chief Justice Shepard to discuss this matter and the issue of the public defense fund's budget being separate from the Supreme Court's budget. Rep. Smith spoke about the difficulty he encountered on other commissions when the hiring of staff was removed from the commission members, citing a lack of communication. He believes a commission should have the authority to hire staff and it should be written into the legislation. Rep. Steuerwald stated that regarding the budget being separate, he believes that the public defense fund is better represented by being part of the Supreme Court's budget; it gives the fund some insulation from being singled out for budget cuts and it is beneficial from a legislative standpoint for the Chief Justice to champion the case for public defense funding.

Susan Carpenter agreed that having the public defense fund as part of the Supreme Court's budget is a huge influence legislatively. She stated that originally when the fund was created for death penalty reimbursements, it was imperative to have the Supreme Court involved because rules for capital defense needed to be adopted. The members agreed that overhead costs for an office separate from State Court Administration would be significantly more than the 1% presently needed to administer the fund.

Larry Landis reported that Rep. Bill Crawford will be presenting a bill to create a statewide juvenile defense office to handle delinquencies, Children-in-Need-of-Services ("CHINS") and Termination-of-Parental-Rights ("TPR") cases. Mr. Landis stated that he suggested another way to do that is to increase funding to the Commission to cover the cost of reimbursing for CHINS/TPR cases instead of creating a whole separate structure. Some public defenders who do not have the level of expertise necessary to handle these cases would like to see a separate juvenile defense office. They would like a different delivery system than public defenders being appointed in CHINS and TPR cases that do not know how to handle these cases. The bill has not yet been filed.

Adjournment: The next Commission meeting is scheduled for March 23, 2011. There being no further business to discuss, David Hensel moved to adjourn the meeting, and Vernon Smith seconded the motion. The motion passed and the meeting adjourned at 3:00 p.m.

Mark Rutherford, Chairman

Date